

programming and its total professional sports programming content is dwarfed by the number of professional sporting events telecast by MASN. *See id.*

COUNT TWO

COMCAST'S REFUSAL TO CARRY MASN ON THE FORMER ADELPHIA SYSTEMS IN VIOLATION OF THE COMMUNICATIONS ACT AND COMMISSION RULES

89. The allegations in paragraphs 1-88 above are repeated here.

90. Comcast's refusal to carry MASN in the former Adelphia systems that are predominantly located in Roanoke/Lynchburg and other Virginia systems and its refusal to upgrade those systems or to provide a reasonable timetable for the upgrading of those systems is unlawful and contrary to the anti-discrimination principles of the Cable Act and the Commission's implementing regulations.

91. Comcast's refusal to carry MASN in the former Adelphia systems that already have been upgraded is an improper exercise of its discretion under the Term Sheet because that discretion is being exercised in a discriminatory manner to disfavor an unaffiliated RSN, MASN.

92. MASN is similarly situated to CSN-MA throughout Comcast's Virginia footprint for the purpose of the non-discrimination mandates of the Cable Act and the Commission's rules. MASN and CSN-MA are each RSNs under federal law and each carry the games of major professional sports teams, making clear that MASN and CSN-MA are actual and potential competitors.

93. Comcast represented to this Commission that it would rapidly upgrade the former Adelphia systems that it acquired in 2006, a representation that was crucial to this Commission's approval of the *Adelphia* transaction. The need to do so was proffered as the justification for Comcast's request for "discretion" in launching approximately [REDACTED] subscribers on former Adelphia systems. Comcast's failure to make the necessary upgrades within a reasonable period

of time in this region of Virginia and elsewhere and its refusal to provide a reasonable time frame in which those upgrades will enable subscribers to receive MASN should be redressed by this Commission's remedial powers. *See* 47 C.F.R. § 76.1302(g)(1).

94. Comcast's affiliated RSN, CSN-MA, is telecasting sports programming in Virginia on many of Comcast's former Adelphia systems that Comcast represented were technologically incapable of carrying MASN and that Comcast promised to upgrade. Comcast's refusal to carry MASN on those systems thus represents discrimination on the basis of affiliation in violation of Commission rules.

95. Comcast has the same incentives to preclude MASN from obtaining subscribers on systems that it has not launched. Because MASN's content represents "must-have" programming (*Adelphia Order* ¶ 124), Comcast's refusal to make that programming available to its subscribers or to upgrade its systems represents discriminatory treatment in favor of its affiliated RSN, CSN-MA, which continues to be telecast on those former Adelphia systems.

96. Comcast has other affiliated programming that it seeks to protect by excluding MASN from these markets. In addition to CSN-MA, which directly competes with MASN for valuable regional sports programming rights, Comcast also holds an equity interest in the Baseball Channel, which will launch in 2009 and will televise a substantial number of out-of-market MLB games. By denying MASN to Comcast subscribers, Comcast increases the value of the Baseball Channel because it constitutes a competitive programming outlet for MLB games. Comcast's exclusionary strategy also causes MASN harm by diminishing MASN's ability to build fan allegiances in the Orioles and Nationals in an area designated by MLB as the exclusive home television territory for those teams. In addition to the Baseball Channel, Comcast also derives substantial revenues from the Extra Innings package consisting of out-of-market MLB

games. The availability of that programming on Comcast's systems with the exclusion of MASN further diminishes the ability of the Orioles and Nationals to grow and retain their fan bases.

97. Comcast cannot invoke the Term Sheet as a basis for not launching MASN in the former Adelphia systems. Comcast did not represent to MASN that those systems would never be launched; rather, Comcast represented to this Commission that it would upgrade those former Adelphia systems, thereby enabling those subscribers to obtain "must-have" regional sports programming of the type telecast by MASN. Comcast's refusal to carry MASN on those systems and/or to commit to a date when those former Adelphia systems would be upgraded is part of a discriminatory strategy that protects Comcast's affiliated RSN from competition in those areas. To the extent that Comcast invokes the language giving it "discretion" to make future launches of former Adelphia systems and any newly-acquired systems, such discretion cannot be deployed in a discriminatory manner. For Comcast to delay making needed upgrades to former Adelphia systems while protecting its affiliated RSN from competition by MASN represents unlawful discrimination.

RELIEF SOUGHT

Accordingly, MASN respectfully requests, pursuant to 47 C.F.R. § 76.1302(g), that the Commission:

(a) declare that Comcast's conduct is a violation of the program carriage obligations under the Communications Act and Commission rules;

(b) order Comcast to provide carriage on all Comcast systems throughout MASN's Territory on the same terms and conditions that MASN has contracted for with Comcast, or such other terms and conditions as the Commission shall deem just and reasonable;

REDACTED

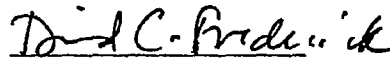
(c) order Comcast that, if one or more such Comcast systems lack capacity to add MASN's programming, such system delete a programming service owned or controlled by Comcast or its affiliates;

(d) direct Comcast to provide a date certain by which the necessary upgrades will be made to its former Adelphia systems and to order carriage on those systems when such upgrades have been made;

(e) grant MASN substantial damages that have resulted from Comcast's misconduct; and

(f) grant MASN such other and further relief as the Commission deems just and proper.

Respectfully submitted,



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Dated: July 1, 2008

Counsel for TCR Sports Broadcasting
Holding, L.L.P.

CERTIFICATE OF SERVICE

I, David C. Frederick, hereby certify that on this 7th day of August 2008, a copy of the foregoing Revised Redacted Carriage Agreement Complaint, the original confidential version having been served on July 1, 2008, was served upon the parties listed below by overnight delivery.

David C. Frederick

Arthur S. Block, Esq.
Senior Vice President, General Counsel
and Secretary
Comcast Corporation
1500 Market Street
Philadelphia, PA 19102

ADDENDUM

**Statutory and
Regulatory Provisions**

TABLE OF CONTENTS

Statutory Provisions:

47 U.S.C. § 522	Add. 01
47 U.S.C. § 536	Add. 03

Regulatory Provisions:

47 C.F.R. § 76.7	Add. 04
47 C.F.R. §§ 76.1300 – 76.1302	Add. 08

47 U.S.C.A. § 522

Effective: February 08, 1996

UNITED STATES CODE ANNOTATED
TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5—WIRE OR RADIO COMMUNICATION
SUBCHAPTER V-A—CABLE COMMUNICATIONS
PART I—GENERAL PROVISIONS
→ § 522. Definitions

For purposes of this subchapter--

- (1) the term "activated channels" means those channels engineered at the headend of a cable system for the provision of services generally available to residential subscribers of the cable system, regardless of whether such services actually are provided, including any channel designated for public, educational, or governmental use;
- (2) the term "affiliate", when used in relation to any person, means another person who owns or controls, is owned or controlled by, or is under common ownership or control with, such person;
- (3) the term "basic cable service" means any service tier which includes the retransmission of local television broadcast signals;
- (4) the term "cable channel" or "channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel (as television channel is defined by the Commission by regulation);
- (5) the term "cable operator" means any person or group of persons (A) who provides cable service over a cable system and directly or through one or more affiliates owns a significant interest in such cable system, or (B) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a cable system;
- (6) the term "cable service" means--
 - (A) the one-way transmission to subscribers of (i) video programming, or (ii) other programming service, and
 - (B) subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service;
- (7) the term "cable system" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include (A) a facility that serves only to retransmit the television signals of 1 or more television broadcast stations; (B) a facility that serves subscribers without using any public right-of-way; (C) a facility of a common carrier which is subject, in whole or in part, to the provisions of subchapter II of this chapter, except that such facility shall be considered a cable system (other than for purposes of section 541(c) of this title) to the extent such facility is used in the transmission of video programming directly to subscribers, unless the extent of such use is solely to provide interactive on-demand services; (D) an open video system that complies with section 573 of this title; or (E) any facilities of any electric utility used solely for operating its electric utility system;
- (8) the term "Federal agency" means any agency of the United States, including the Commission;
- (9) the term "franchise" means an initial authorization, or renewal thereof (including a renewal of an

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Add.01

47 U.S.C.A. § 522

authorization which has been granted subject to section 546 of this title), issued by a franchising authority, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system;

(10) the term "franchising authority" means any governmental entity empowered by Federal, State, or local law to grant a franchise;

(11) the term "grade B contour" means the field strength of a television broadcast station computed in accordance with regulations promulgated by the Commission;

(12) the term "interactive on-demand services" means a service providing video programming to subscribers over switched networks on an on-demand, point-to-point basis, but does not include services providing video programming prescheduled by the programming provider;

(13) the term "multichannel video programming distributor" means a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming;

(14) the term "other programming service" means information that a cable operator makes available to all subscribers generally;

(15) the term "person" means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity;

(16) the term "public, educational, or governmental access facilities" means--

(A) channel capacity designated for public, educational, or governmental use; and

(B) facilities and equipment for the use of such channel capacity;

(17) the term "service tier" means a category of cable service or other services provided by a cable operator and for which a separate rate is charged by the cable operator;

(18) the term "State" means any State, or political subdivision, or agency thereof;

(19) the term "usable activated channels" means activated channels of a cable system, except those channels whose use for the distribution of broadcast signals would conflict with technical and safety regulations as determined by the Commission; and

(20) the term "video programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Current through P.L. 109-12, approved 05/05/05

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Add.02

47 U.S.C.A. § 536

Effective: [See Text Amendments]

UNITED STATES CODE ANNOTATED
TITLE 47, TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS
CHAPTER 5—WIRE OR RADIO COMMUNICATION
SUBCHAPTER V-A—CABLE COMMUNICATIONS
PART II—USE OF CABLE CHANNELS AND CABLE OWNERSHIP RESTRICTIONS
→ § 536. Regulation of carriage agreements

(a) Regulations

Within one year after October 5, 1992, the Commission shall establish regulations governing program carriage agreements and related practices between cable operators or other multichannel video programming distributors and video programming vendors. Such regulations shall--

- (1) include provisions designed to prevent a cable operator or other multichannel video programming distributor from requiring a financial interest in a program service as a condition for carriage on one or more of such operator's systems;
- (2) include provisions designed to prohibit a cable operator or other multichannel video programming distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage on a system;
- (3) contain provisions designed to prevent a multichannel video programming distributor from engaging in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors;
- (4) provide for expedited review of any complaints made by a video programming vendor pursuant to this section;
- (5) provide for appropriate penalties and remedies for violations of this subsection, including carriage; and
- (6) provide penalties to be assessed against any person filing a frivolous complaint pursuant to this section.

(b) "Video programming vendor" defined

As used in this section, the term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

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(4) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Each submission must contain a written verification that the signatory has read the submission and to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose appropriate sanctions.

(5) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority. Opposing authorities must be distinguished. Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(6) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(b) *Copies to be Filed.* Unless otherwise directed by specific regulation or the Commission, an original and two (2) copies of all pleadings shall be filed in accordance with §0.401(a) of this chapter, except that petitions requiring fees as set forth at part I, subpart G of this chapter must be filed in accordance with §0.401(b) of this chapter.

(c) *F frivolous pleadings.* It shall be unlawful for any party to file a frivolous pleading with the Commission. Any violation of this paragraph shall con-

stitute an abuse of process subject to appropriate sanctions.

[64 FR 6382, Feb. 10, 1999]

§76.7 General special relief, waiver, enforcement, complaint, show cause, forfeiture, and declaratory ruling procedures.

(a) *Initiating pleadings.* In addition to the general pleading requirements, initiating pleadings must adhere to the following requirements:

(1) *Petitions.* On petition by any interested party, cable television system operator, a multichannel video programming distributor, local franchising authority, or an applicant, permittee, or licensee of a television broadcast or translator station, the Commission may waive any provision of this part 76, impose additional or different requirements, issue a ruling on a complaint or disputed question, issue a show cause order, revoke the certification of the local franchising authority, or initiate a forfeiture proceeding. Petitions may be submitted informally by letter.

(2) *Complaints.* Complaints shall conform to the relevant rule section under which the complaint is being filed.

(3) *Certificate of service.* Petitions and Complaints shall be accompanied by a certificate of service on any cable television system operator, franchising authority, station licensee, permittee, or applicant, or other interested person who is likely to be directly affected if the relief requested is granted.

(4) *Statement of relief requested.* (i) The petition or complaint shall state the relief requested. It shall state fully and precisely all pertinent facts and considerations relied on to demonstrate the need for the relief requested and to support a determination that a grant of such relief would serve the public interest.

(ii) The petition or complaint shall set forth all steps taken by the parties to resolve the problem, except where the only relief sought is a clarification or interpretation of the rules.

(iii) A petition or complaint may, on request of the filing party, be dismissed without prejudice as a matter of right prior to the adoption date of any final action taken by the Commission with respect to the petition or complaint. A

request for the return of an initiating document will be regarded as a request for dismissal.

(5) *Failure to prosecute.* Failure to prosecute petition or complaint, or failure to respond to official correspondence or request for additional information, will be cause for dismissal. Such dismissal will be without prejudice if it occurs prior to the adoption date of any final action taken by the Commission with respect to the initiating pleading.

(b) *Responsive pleadings.* In addition to the general pleading requirements, responsive pleadings must adhere to the following requirements:

(1) *Comments/oppositions to petitions.* Unless otherwise directed by the Commission, interested persons may submit comments or oppositions within twenty (20) days after the date of public notice of the filing of such petition. Comments or oppositions shall be served on the petitioner and on all persons listed in petitioner's certificate of service, and shall contain a detailed full showing, supported by affidavit, of any facts or considerations relied on.

(2) *Answers to complaints.* (i) Unless otherwise directed by the Commission, any party who is served with a complaint shall file an answer in accordance with the following, and the relevant rule section under which the complaint is being filed.

(ii) The answer shall be filed within 20 days of service of the complaint, unless another period is set forth in the relevant rule section.

(iii) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any party against whom a complaint is filed failing to file and serve an answer within the time and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(iv) The answer shall admit or deny the averments on which the adverse party relies. If the defendant is without

knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(v) Averments in a complaint are deemed to be admitted when not denied in the answer.

(c) *Reply.* In addition to the general pleading requirements, reply comments and replies must adhere to the following requirements:

(1) The petitioner or complainant may file a reply to a responsive pleading which shall be served on all persons who have filed pleadings and shall also contain a detailed full showing, supported by affidavit, of any additional facts or considerations relied on. Unless expressly permitted by the Commission, reply comments and replies to an answer shall not contain new matters.

(2) Failure to reply will not be deemed an admission of any allegations contained in the responsive pleading, except with respect to any affirmative defense set forth therein.

(3) Unless otherwise directed by the Commission or the relevant rule section, comments and replies to answers must be filed within ten (10) days after submission of the responsive pleading.

(d) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(e) *Additional procedures and written submissions.* (1) The Commission may specify other procedures, such as oral argument or evidentiary hearing directed to particular aspects, as it deems appropriate. In the event that an evidentiary hearing is required, the Commission will determine, on the basis of the pleadings and such other

procedures as it may specify, whether temporary relief should be afforded any party pending the hearing and the nature of any such temporary relief.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the requirements set forth in the Communications Act and in this part, as well as affidavits and exhibits.

(3) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence.

(i) These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(ii) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(iii) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(f) *Discovery.* (i) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories, depositions or document production.

(2) The Commission staff may in its discretion direct the parties to submit discovery proposals, together with a memorandum in support of the discovery requested. Such discovery requests may include answers to written interrogatories, document production or depositions. The Commission staff may hold a status conference with the parties, pursuant to §76.8 of this part, to determine the scope of discovery, or direct the parties regarding the scope of discovery. If the Commission staff determines that extensive discovery is required or that depositions are warranted, the staff may advise the parties that the proceeding will be referred to

an administrative law judge in accordance with paragraph (g) of this section.

(g) *Referral to administrative law judge.*

(i) After reviewing the pleadings, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any proceeding or discrete issues arising out of any proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute through alternative dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Media Bureau Chief, the Media Bureau Chief shall not be deemed to be a party to a proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (g).

(h) *System community units outside the Contiguous States.* On a finding that the public interest so requires, the Commission may determine that a system community unit operating or proposing to operate in a community located outside of the 48 contiguous states shall comply with provisions of subparts D, F, and G of this part in addition to the provisions thereof otherwise applicable.

(i) *Commission ruling.* The Commission, after consideration of the pleadings, may determine whether the public interest would be served by the grant, in whole or in part, or denial of the request, or may issue a ruling on the complaint or dispute, issue an order to show cause, or initiate a forfeiture proceeding.

NOTE 1 TO §76.7: After issuance of an order to show cause pursuant to this section, the rules of procedure in Title 47, part 1, subpart A, §§1.91-1.95 of this chapter shall apply.

NOTE 2 TO §76.7: Nothing in this section is intended to prevent the Commission from initiating show cause or forfeiture proceedings on its own motion; Provided, however, that show cause proceedings and forfeiture proceedings pursuant to §1.90(g) of this chapter will not be initiated by such motion until the affected parties are given

Federal Communications Commission

§76.9

an opportunity to respond to the Commission's charges.

NOTE 3 TO §76.7: Forfeiture proceedings are generally nonhearing matters conducted pursuant to the provisions of §1.80(f) of this chapter (Notice of Apparent Liability). Petitioners who contend that the alternative hearing procedures of §1.80(g) of this chapter should be followed in a particular case must support this contention with a specific showing of the facts and considerations relied on.

NOTE 4 TO §76.7: To the extent a conflict is perceived between the general pleading requirements of this section, and the procedural requirements of a specific section, the procedural requirements of the specific section should be followed.

[64 FR 6569, Feb. 10, 1999, as amended at 67 FR 13234, Mar. 21, 2002]

§76.8 Status conference.

(a) In any proceeding subject to the part 76 rules, the Commission staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(1) Simplification or narrowing of the issues;

(2) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(3) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(4) Settlement of the matters in controversy by agreement of the parties;

(5) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(6) The need and schedule for filing briefs, and the date for any further conferences; and

(7) Such other matters that may aid in the disposition of the proceeding.

(b) Any party may request that a conference be held at any time after an initiating document has been filed.

(c) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(d) The failure of any attorney or party, following advance notice with an opportunity to be present, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(e) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of matters relevant to the conduct of the proceeding including, *inter alia*, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

[64 FR 4571, Feb. 10, 1999]

§76.9 Confidentiality of proprietary information.

(a) Any materials filed in the course of a proceeding under this provision may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in FOIA.

(b) Submissions containing information claimed to be proprietary under this section shall be submitted to the Commission in confidence pursuant to the requirements of §0.459 of this chapter and clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited reply is submitted, and shall be served on the opposing parties.

(c) Except as provided in paragraph (d) of this section, materials marked as proprietary may be disclosed solely to the following persons, only for use in the proceeding, and only to the extent

**Subpart Q—Regulation of
Carriage Agreements**

SOURCE: 58 FR 60395, Nov. 16, 1993, unless otherwise noted.

§76.1300 Definitions.

As used in this subpart:

(a) *Affiliated.* For purposes of this subpart, entities are affiliated if either entity has an attributable interest in the other or if a third party has an attributable interest in both entities.

(b) *Attributable interest.* The term "attributable interest" shall be defined by reference to the criteria set forth in Notes 1 through 5 to §76.501 provided, however, that:

(1) The limited partner and LLC/LLP/RLLP insulation provisions of Note 2(f) shall not apply; and

(2) The provisions of Note 2(a) regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(c) *Buying groups.* The term "buying group" or "agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(d) *Multichannel video programming distributor.* The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a di-

rect broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(e) *Video programming vendor.* The term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

[58 FR 60395, Nov. 16, 1993, as amended at 64 FR 67197, Dec. 1, 1999]

§76.1301 Prohibited practices.

(a) *Financial interest.* No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or more of such operator's/provider's systems.

(b) *Exclusive rights.* No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination.* No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

§76.1302 Carriage agreement proceedings.

(a) *Complaints.* Any video programming vendor or multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in §76.7 of this part with the following additions or changes:

(b) *Prefiling notice required.* Any aggrieved video programming vendor or multichannel video programming distributor intending to file a complaint under this section must first notify the potential defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301 of this part. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(c) *Contents of complaint.* In addition to the requirements of § 76.7 of this part, a carriage agreement complaint shall contain:

(1) The type of multichannel video programming distributor that describes complainant, the address and telephone number of the complainant, and the address and telephone number of each defendant;

(2) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(3) For complaints alleging a violation of § 76.1301(c) of this part, evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly.

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (b) of this section has been made.

(d) *Answer.* (1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall address the relief requested in the complaint, including legal and documentary support, for such response, and may include an alternative relief proposal without any prejudice to any denials or defenses raised.

(e) *Reply.* Within twenty (20) days after service of an answer, unless otherwise directed by the Commission, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters.

(f) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with a video programming distributor that a party alleges to violate one or more of the rules contained in this section; or

(2) The multichannel video programming distributor offers to carry the video programming vendor's programming pursuant to terms that a party alleges to violate one or more of the rules contained in this section, and such offer to carry programming is unrelated to any existing contract between the complainant and the multichannel video programming distributor; or

(3) A party has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on violations of one or more of the rules contained in this section.

(g) *Remedies for violations—(1) Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of a video programming vendor's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of a video programming vendor's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of a video programming vendor's programming. In such instances, if the defendant seeks review of the staff, or administrative law judge decision, the order for carriage of

a video programming vendor's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the video programming vendor's programming for an additional period equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (g)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[64 FR 5574, Feb. 10, 1999]

§§ 76.1303-76.1305 (Reserved)

Subpart R—Telecommunications Act Implementation

SOURCE: 61 FR 18980, Apr. 30, 1996, unless otherwise noted.

§ 76.1400 Purpose.

The rules and regulations set forth in this subpart provide procedures for administering certain aspects of cable regulation. These rules and regulations provide guidance for operators, subscribers and franchise authorities with respect to matters that are subject to immediate implementation under governing statutes but require specific regulatory procedures or definitions.

§ 76.1402 CPST rate complaints.

(a) A local franchise authority may file rate complaints with the Commission within 180 days of the effective date of a rate increase on the cable operator's cable programming services tier if within 90 days of that increase the local franchise authority receives more than one subscriber complaint concerning the increase.

(b) Before filing a rate complaint with the Commission, the local franchise authority must first give the cable operator written notice, including a draft FCC Form 329, of the local

franchise authority's intent to file the complaint. The local franchise authority must give an operator a minimum of 30 days to file with the local franchise authority the relevant FCC forms that must be filed to justify a rate increase or, where appropriate, certification that the operator is not subject to rate regulation. The operator must file a complete response with the local franchise authority within the time period specified by the local franchise authority. The local franchise authority shall file with the Commission the complaint and the operator's response to the Complaint. If the operator's response to the complaint asserts that the operator is exempt from rate regulation, the operator's response can be filed with the local franchise authority without filing specific FCC Forms.

§ 76.1404 Use of cable facilities by local exchange carriers.

(a) For purposes of § 76.505(d)(2), the Commission will determine whether use of a cable operator's facilities by a local exchange carrier is reasonably limited in scope and duration according to the procedures in paragraph (b) of this section.

(b) Based on the record created by § 76.1617 of the rules, the Commission shall determine whether the local exchange carrier's use of that part of the transmission facilities of a cable system extending from the last multi-use terminal to the premises of the end user is reasonably limited in scope and duration. In making this determination, the Commission will evaluate whether the proposed joint use of cable facilities promotes competition in both services and facilities, and encourages long-term investment in telecommunications infrastructure.

[65 FR 53917, Sept. 5, 2000]

Subpart S—Open Video Systems

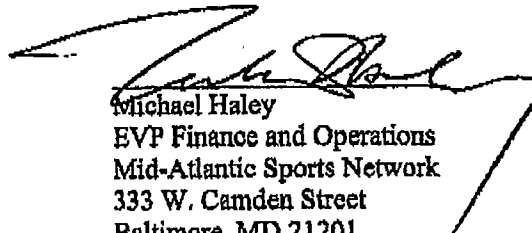
SOURCE: 61 FR 28708, June 5, 1996, unless otherwise noted.

§ 76.1500 Definitions.

(a) *Open video system.* A facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment that is

VERIFICATION OF MICHAEL HALEY

I have read MASN's Carriage Agreement Complaint in this matter and, pursuant to 47 C.F.R. § 76.6(a)(4), state that, to the best of my knowledge, information, and belief formed after reasonable inquiry, the Complaint is well grounded in fact and is warranted under existing law or a good-faith argument for the extension, modification, or reversal of existing law. The Complaint is not interposed for any improper purpose.



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July 1, 2008